

BOARD OF COUNTY COMMISSIONERS

YELLOWSTONE COUNTY, MONTANA Tuesday, February 28, 2012

SUBJECT: Special Review #324 – Creative Korner Early Childhood Center – 24

Nightingale Drive

THROUGH: Candi Beaudry, AICP, Planning Director

FROM: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

REQUEST

This is a special review application to allow the location of a new day care center for up to 37 children in a Residential 9,600 (R-96) zone. The 31,388 square foot parcel is located at 24 Nightingale Drive in Lockwood. The property has been developed since the early 1970s for the Chapel of Hope Assembly of God of Lockwood. The legal description is Lots 23, 24 and 25 of Florence Subdivision and the property owner is the Chapel of Hope Assembly of God of Lockwood. The applicant is Sabrina Frerichs. The applicant currently runs the Creative Korner Early Childhood Center at 706 Miles Avenue in Billings as a group day care. The County Zoning Commission conducted a public hearing on February 13, 2012, and is forwarding a recommendation of conditional approval on a 3-1 vote.

APPLICATION DATA

OWNERS: Chapel of Hope Assembly of God of Lockwood

AGENT: Sabrina Frerichs, Creative Korner Early Childhood Center

LEGAL DESCRIPTION: Lots 23, 24 and 25, Florence Subdivision

ADDRESS: 24 Nightingale Drive

CURRENT ZONING: R-96

EXISTING LAND USE: Existing church and parking lot

PROPOSED LAND USE: Day care center – remodel of existing building

SIZE OF PARCEL: 31,388 square feet

CONCURRENT APPLICATIONS

None

APPLICABLE ZONING HISTORY

Subject Property – None

Surrounding Property

Special Review #295 – 1207 Palomino – Kids World Learning Center – Conditionally approved for up to 70 children on July 27, 2004, in an R-60 zone. This was originally a church property.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-96

Land Use: Single family homes

SOUTH: Zoning: R-96

Land Use: Single family homes

EAST: Zoning: R-150

Land Use: Single family homes

WEST: Zoning: R-96

Land Use: Single family homes

REASONS

The applicant is requesting a special review to allow an existing church to be remodeled for a day care and learning center for up to 37 children. The applicant, Sabrina Frerichs, operates a small group day care facility (capacity for 12 children) at 706 Miles Avenue in Billings. The proposed location at 24 Nightingale Drive would be licensed for up to 37 children and have 6 employees. Nightingale Drive is a local residential street that intersects with Hillner Lane to south and Rockwell Street and Wanda Lane to the north. The proposed location is approximately 2 blocks north and east of Lockwood School on Highway 87 East. The applicant proposes to remodel the existing church to meet building and fire safety codes for a day care center. The submitted site plan indicates a fenced outdoor play and eating area to the west side of the existing building. The site plan also indicates the installation of landscaped island in the existing parking lot to better direct the flow of traffic into and out of the property. The location of a new day care center in an R-96 zone requires special review approval.

Nightingale Drive has 23 residential homes and the average daily traffic generated by these homes probably ranges from 180 to 230 vehicle trips per day. Neither the Yellowstone County Public Works Department nor the Planning Division has actual traffic count numbers for this street, but the ranges are based on Institute of Traffic Engineers (ITE) trip generation estimates for single family homes. The estimated number of new vehicle trips based on the number of children in the proposed day care is 5 trips per child per day. If the new day care reaches the maximum capacity of 37 children this could generate an additional 185 trips per day. The location near Lockwood School will likely reduce this maximum during the school year since after school day care children would walk to the facility.

The Planning Division consulted the County Public Works Department to discuss possible mitigation of the increased traffic to this new facility. The existing church, based on trip generation manual data, currently generates 6 trips per day during weekdays and 17 to 20 trips during days of worship. The proposed day care will significantly increase traffic on Nightingale Drive and may impact the functioning of the intersection of Hillner Lane and Highway 87 East. The Planning Division in coordination with the County Public Works Department recommended several mitigation options for this traffic increase. The Zoning Commission did not vote on a preferred mitigation options and therefore is forwarding all the options for the Board of County Commissioners to consider.

The County has requested transportation funding for a new sidewalk along the north side of Hillner Lane to provide a safe route to school for area children. This new side walk will have 4

street intersections to cross – not including the major crossing at Highway 87 East. There will be a pedestrian crossing at the intersection of Hillner and Nightingale Drive. There is an "implied" stop control for the intersection of Nightingale Drive and Hillner Lane. Installation of a stop sign at this intersection would enhance pedestrian safety. County Public Works also is concerned with the future repair and replacement of the pavement on Nightingale Drive. This street does not have an RSID in place for maintenance. Future re-paving or re-construction of the street right-of-way improvements would require the formation of an RSID. Water service is through public water from Lockwood Water. Wastewater treatment is handled by a private on-site septic system. Phase 2 of the Lockwood public sewer system may provide public sewer to this location in the future.

Planning staff reviewed this application and recommended conditional approval to the Zoning Commission. The Zoning Commission concurred with this recommendation. A day care center at this location is convenient for children at Lockwood School for after school care and would also provide pre-school children with opportunity for day care in a local area. The Planning Staff and County Public Works are concerned with mitigation of the traffic impacts to the neighborhood and Nightingale Drive. One surrounding property owner contacted the Planning staff prior to the public hearing. Elaine Hill of 107 Nightingale Drive is concerned with the impact on the road and traffic. There are several optional conditions proposed for consideration by the applicant and the Board of County Commissioners.

Special review uses must meet three primary criteria; 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within a zoning district where day care centers may be allowed by special review approval.

The application also conforms to the second and third criteria. The zoning regulations adopted by the Board of County Commissioners have designated all residential zoning districts as locations where day care centers may be allowed. The R-96 zone is intended as a single family area where certain non-residential uses may be allowed by special review. The 2008 Growth Policy encourages new development that is compatible and similar in form and use. The existing church is compatible with the neighborhood and the proposed day care center may be compatible with the surrounding uses if conditions are imposed to mitigate impacts. Remodeling is planned for the building to meet codes for day care centers and improvements to the site are proposed to allow for outdoor recreation and to direct traffic into and out of site. Conditions of approval can ensure the mitigation of any potential negative effects on surrounding property.

The Zoning Commission reviewed this application, held a public hearing, and is forwarding a recommendation of conditional approval on a 3-1 vote.

ZONING COMMISSION HEARING AND DISCUSSION

The Zoning Commission held a public hearing on February 13, 2012, regarding this application. The applicant, Pastor Johan Rockstad and the agent, Sabrina Frerichs, provided testimony to the

Zoning Commission. Several surrounding property owners also attended the hearing and provided written and oral testimony. The written testimony is included as Attachment E.

Pastor Rockstad stated the traffic numbers for days of worship were higher than estimated in the staff reported. He stated the traffic was closer to 50-100 vehicle trips per day during days of worship. Pastor Rockstad stated the church has outgrown the building and has already purchased another location to build a larger church at 2425 Highway 87 East (Special Review #262). Pastor Rockstad stated the church is in the process of getting the covenants removed for this location so it can be sold. The current covenants restrict the uses to a church and parking lot.

Sabrina Frerichs stated she was a life-long member of the church and wanted to serve the community by creating local day care services for Lockwood families. She stated her current location at 706 Miles Avenue serves 6 children. She stated her family is a very conservative family and it is a quiet neighbor on Miles Avenue. She stated the option to have evening hours would not be pursued if the neighborhood objected. She stated the screening fence on the west property line was to provide some sound suppression from the outdoor play areas. The fence would not block access to the alley.

Helen Ruff of 146 Nightingale testified in opposition to the application. She state she lives on the corner of Nightingale and Rockwell – north of the church – and it is a very narrow intersection. She stated many people drive across the corner of her front yard to make the right turn on to Rockwell before heading north on Wanda Lane to Old Hardin Road. She stated there is no sidewalk on Nightingale so everyone has to walk in the street and it is hazardous now for pedestrians. She stated she was opposed to the application because it would add to the safety hazard of her street. Mrs. Ruff submitted written testimony.

Wayne Wagner of 103 Red Oak testified in opposition to the application. He stated he lives right behind – to the west – of the church and is concerned about the new fence. He stated it could block access to the alley that is undeveloped but has utilities and a drainage ditch that runs through. He stated the fence would not be a sound barrier at all but would block some of the view from his property to the new play areas.

Elaine Hill of 107 Nightingale testified in opposition. She submitted a petition with signatures against the proposal. She stated the streets are too narrow and unmaintained for the traffic there is now, and an increase for a 37-child day care would be a safety hazard. She stated she was concerned with the viability of this new small business in a residential neighborhood. She was concerned that if the business failed what would be the next commercial use of the property.

Patricia Hector of 140 Nightingale testified in opposition to the application. She was concerned with the proposal to have night time hours. She stated this would too disruptive to the neighborhood.

Terry McCarthy of 110 Nightingale testified in opposition. She stated she appreciated the need for the church to move out into a larger building. She stated a day care center is a much different use than a church. She stated this would increase traffic too much on this local street. She stated when Old Hardin Road was under construction, the neighborhood saw a big increase in cut

through traffic to avoid the detours and delays. She stated there is no safe place for walkers on the street. She stated this potential traffic increase in not acceptable. She stated she would not sign a petition to change the covenants for the land.

Deb Schmitt of 39 Nightingale testified in opposition to the application. She stated she was all for excellent child care. She stated Lockwood Schools already offers and an excellent afterschool program that is virtually free to all students. She doubted this day care center could compete with this program. She stated she did not want this amount of change on their street. She stated she was not against child care but traffic on the street is already an issue without this use. She stated she has to be very careful now backing out of her driveway.

Sabrina Frerichs clarified that she would not be living in the church and it would only be used for the day care center. She stated her business would be run Monday through Friday and might add Saturday of there is demand. She does not offer day care on Sundays. She stated she is comfortable with the restriction of hours from 6 am to 6:30 pm.

County Zoning Commission Discussion:

The County Zoning Commission closed the public hearing and discussed the application. Zoning Commission Chair Dennis Cook stated that this application will go to the Board of County Commissioner on February 28, 2012, and that anyone wishing to participate in that public hearing is welcome to do so.

Nicole Cromwell clarified for the Commission that no other use would be allowed by the special review. She stated if the business failed, another day care provider could occupy the property but would also have to meet any conditions of the approval. Ms. Cromwell clarified the zoning is not changing and this is a specific use permission that can be granted by the Board of County Commissioners on a case-by-case basis. Ms. Cromwell explained the alternate mitigation measures for handling the potential traffic impact from the day care center. She explained that mitigation measures should have a direct link to the potential impact.

Commission member Ole Shafer made a motion to recommend conditional approval of the application and this was seconded by member Al Littler. The Zoning Commission concurred with the proposed conditions and voted 3 in favor and one opposed to the motion. Commission member Joan Hurdle voted in opposition.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of <u>conditional approval</u> on a 3-1 vote.

CONDITIONS

- 1. The approval shall be limited to Lots 23, 24 and 25 of Florence Subdivision generally located at 24 Nightingale Drive.
- 2. This special review approval is for the location of a day care center in an existing church with an off-street parking lot for at least 12 vehicles. No other special review use is intended or implied by this approval.
- 3. The development of the lot shall be in substantial conformance with the submitted site plan. Minor adjustments to the location of parking spaces, the structure or driveways are

allowed. The applicant will install each outdoor element as shown on the site plan including 2 fenced outdoor play areas, an outdoor eating area, a dumpster enclosure with 3-sides and a closing gate, the landscaped island to create a circulation drive aisle for traffic, installation of a new sign not to exceed 6 feet in height in a landscaped island and other amenities as shown on the site plan.

- 4. Alternative A: The maximum number of children in the day care will be 23.
- 5. Alternative B: The applicant will install a stop control sign at the intersection of Nightingale Drive and Hillner Lane. The applicant will install a stop control sign at each drive approach exit from the property on to Nightingale Drive. The applicant will sign and record with the County Clerk and Recorder a Waiver of Right to Protest any future Rural Special Improvement District (RSID) applicable to the property.
- 6. There shall be no new lighting within the parking lot or on the new sign for the day care center.
- 7. The day care center shall not be open for children before 6 am or after 6:30 pm daily.
- 8. Any new exterior lighting shall have full cutoff shields so no part of the lens or fixture extends below the shield.
- 9. The proposed development must comply with all other zoning requirements including but not limited to landscaping (Section 27-1100), off-street parking (Section 27-1200), including approval of the parking lot surfacing by County Public Works and the County sign code (Article X).
- 10. The proposed development shall comply with all other limitations of Sec. 27-613 concerning special review uses.
- 11. Within 36 months of special review approval, the applicant shall submit a zoning compliance permit and receive approval of such permit from the Planning Division prior to any construction of the building.
- 12. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
- 13. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.

NOTE Approval of this Special Review <u>does not</u> constitute approval of a building permit, zoning compliance permit, sign permit, or fence permit. Compliance with all applicable local codes will be reviewed at the zoning compliance permit level.

BOARD OF COUNTY COMMISSION ACTION

The Board of County Commissioners may do the following when acting on a Special Review application:

- 1. Deny the application for a special review use.
- 2. Grant the application for a special review use.
- 3. Conditionally grant the application for a special review use.
- 4. Delay action on the application for a period not to exceed thirty (30) days.
- 5. Give reasons for the recommendation.

Before approving a special review use, the Board of County Commissioners shall find that the contemplated use:

- 1. Complies with all requirements of this Resolution;
- 2. Is consistent with the objectives and purposes of the County Zoning Regulations and the Growth Policy;
- 3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

Further the Board of County Commissioners shall consider and may impose modifications or conditions concerning, but not limited to the following:

- 1. Street and road capacity;
- 2. Ingress and egress to adjoining streets;
- 3. Off-street parking;
- 4. Fencing, screening and landscaping;
- 5. Building bulk and location;
- 6. Usable open space;
- 7. Signs and lighting;
- 8. Noise, vibration, air pollution and similar environmental influences.

The proposed use fits with the existing commercial land uses on neighboring properties in the area. The proposed land use complies with the following goals of the Yellowstone County and City of Billings 2008 Growth Policy.

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns.
 - Approval of this special review is consistent with neighboring properties. Limitations on the number of children or traffic and pedestrian safety improvements will ensure the compatibility of the use. Lockwood School is approximately 2 blocks from this location. Compliance with the conditions of approval will ensure compatibility with the neighborhood.
- Goal: New developments that are sensitive to and compatible with the character of existing neighborhoods.

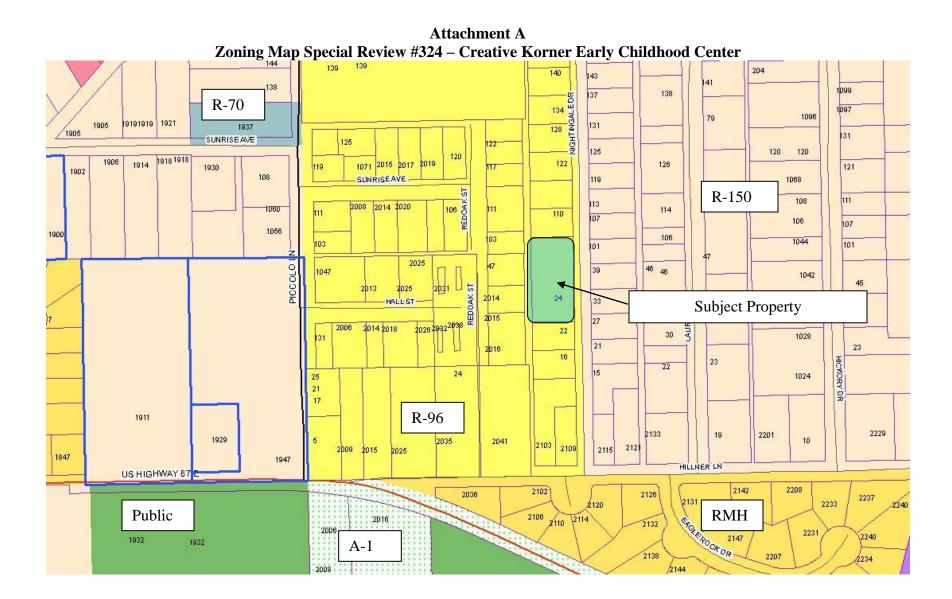
The existing church use of this lot is consistent with the surrounding developments and consistent with the zoning. The conversion of the existing building will allow the re-use of the building for a use compatible with residential uses.

ATTACHMENTS

Attachment A: Zoning Map Attachment B: Site Plan Attachment C: Site Photos

Attachment D: Applicant's Letter and exhibits

Attachment E: Testimony from surrounding property owners



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Attachment B
Site Plan Special Review #324 – Creative Korner Early Childhood Center

Attachment C Site Photographs Special Review #324 – Creative Korner Early Childhood Center



Subject Property



View north from south corner of parking area

Attachment C, continued Site Photographs Special Review #324 – Creative Korner Early Childhood Center



View north on Nightingale Drive



View south on Nightingale Drive

Attachment C, continued Site Photographs Special Review #324 – Creative Korner Early Childhood Center

View south at intersection of Nightingale Drive and Hillner Lane



Aerial view of Subject Property

Attachment D

Applicant's Letter Special Review #324 – Creative Korner Early Childhood Center

Creative Korner Early Childhood Learning center is purchasing the property at 24 Nightingale Dr. and is requesting a special review. We are requesting that the county would allow the change of usage. Currently the property is owned by Chapel of Hope Assembly of God of Lockwood Inc. Upon completion of the sale of property, Creative Korner wishes to open and operate a Licensed Childcare center providing care to 37 children and employing six individuals. The Following, are reasons we believe the addition of a childcare facility would in no way change the current atmosphere of the neighborhood. In fact, we believe that the addition of this facility will enhance the quality of life for the Lockwood community

- 1. A. In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?
 - First, Creative Korner, will help improve a sense of community in the neighborhood. It is
 reasonable to expect, that people in and around the neighborhood might bring their
 children to the center. The children of these families will be attending the same
 elementary and middle school. People from this community will be working in the
 center. Our purchase and use of this property will help the efforts of a local church, to
 grow and move to a larger location within the community.
 - Second, Creative Korner, will be helping create a mixed use neighborhood. It is a
 possibility that people living in this neighborhood could live, work, obtain childcare, go
 to the grocery store, buy fuel, and drop their children off at school all within a mile
 radios. Having the center in this location will eliminate the need to bring their children
 into the city to find childcare.
 - Third, it is important for working families to have safe, convenient and affordable childcare. When you look at improving the economics of a community, childcare must be in place to support those workers. The Lockwood community is seriously lacking daycare centers or businesses. The community has experienced a 47% growth in the past ten years. The majority of its residents live in Lockwood and commute to billings for work and childcare options. When the center opens it will provide access to 37 children. Because the center accepts Best Beginning scholarships, these childcare spots will be available to all children regardless of their income level.
 - Fourth, The center will help maintain and improve the aesthetic quality of the
 community. We will be updating the building to meet current fire codes providing for
 safe usage of the building. We will be painting the outside of the building to match the
 neighborhood. We will be adding fences and doing general maintenance of both the
 lawn and the building.
 - Finally, We see the center as a means of enhancing the community. Friendships will be built there, children and families will be empowered, lives will be changed. The outcome of a person's academic career can be directly linked to their experiences in the earliest years of life. Creative Korner strives to provide a place for children to learn and grow, to be a connecting point for families, to provide parenting support, and meet the needs of its community.

- 1. B. Why is there a need for the intended us of the property at this location.
 - First, Lockwood has experienced a 47% population growth in the past ten years. The community has 1,175 students in K-8.
 - This property is located in between two major arterial roads in the community, HWY 87E and Old Harding Rd. People that use these roads as a means to travel to and from work will find it convenient for dropping off and picking up their children. The neighborhood that the property is located in will provide a safe atmosphere for the children in the center. Finally, the center will be located three blocks from the elementary school providing a quick and easy way to get children to and from school. For parents that use the Boys and Girls club, they will not have to travel far to pick younger children up from the center.
- 1. C. How will the public interest be served if the application is approved?
 - Creative Korner will provide safe and affordable childcare located in the neighborhood the children are living in. The childcare will be located near the family's home, providing the opportunity to work or run errands without having to pick their children up first.
- 1. D. Prepare a written statement addressing what is intended to be done with the property, including new construction or change in the use of the property, and why the special review is being sought.
 - The intentions of Creative Korner, is to open a daycare center that will provide care for 37 children ages birth through twelve. We will be open Monday through Friday 6:30 am to 6 pm. We would like to have the option of extending our hours and days of operation as the need is warranted.
 - In regards to the building, we will be making some aesthetic modification, fire code modification, electrical and plumbing modification.
 - Aesthetically, we will be adding two fenced play areas. Other than fencing off play areas, there will be no changes made to the grass or parking areas. We will be replacing the deck that goes into the lower entry way. We will paint the building, and the wheelchair ramp and stairs that access the entryway to the upper level. We will be moving the storage sheds to the location located on our scale drawing. We will be adding two storage sheds off the west end of building. One fenced area will be located off the Northwest end of building, which is the parking lot. The other, much smaller play area, will be off the southwest corner of building. The play area off the southwest corner of building will be used as a play area for children ages 0-2 years.
 - For fire code purposes, we will be adding an egress door to the upper level of the building on the southeast corner facing the neighbor's house. We will be adding a set of

- stairs coming from the new egress door. In the basement we will be adding an egress window off of the southeast side of the building.
- Electrical upgrades will consist of, upgrading to a 200amp service, relocating service to
 west end of building because of improper original instillation and transforming an office
 into a kitchen.
- Plumbing upgrades consist of the addition of a bathroom in the upper level and transforming an existing office into a kitchen.

We are requesting the special review as required by the city/county planning board so that we may use this facility as a licensed daycare center. Thank you for your time and consideration.

Sincerely

Sabrina Frerichs Salve Fire

Owner of Creative Korner Early Childhood Learning Center.



Page 16 of 22



Page 17 of 22

Attachment E Written Testimony on Special Review #324 – Creative Korner Early Childhood Center

February 10, 2012

Planning And Community Services Department 510 North Broadway, 4th Floor Billings, Montana 59101

RE: County Special Review #324 Project Number: 12-01

Dear Sirs:

We are <u>STRONGLY</u> against the change of the zoning for 24 Nightingale Drive. When we moved here we knew there was a church there and we were ok with that. We do not believe a day care would be beneficial to our neighborhood. It would only cause problems for our quite residential neighborhood. The excess traffic would cause concern for the children on this street and others that use this street to walk to Lockwood School or to catch the busses to go to the High Schools in Billings.

Our road is not the kind of road that can handle the excess amount of traffic that a day care would generate. We live on the corner of Nightingale Drive and Rockwell. The corner is hardly wide enough for two vehicles and we have seen many near misses to a lot of accidents. Some could have been quite bad. We have also had vehicles drive across our property to avoid an accident. Many of the neighbors in this neighborhood walk. A car coming around this corner almost hit a neighbor and myself. It was pretty scary.

WE DO NOT WANT A BUSINESS ON OUR STREET. If this business would fail who knows what might move in next. We would rather see the property go back to residential and have a house built on it. At lease another house would not affect our property values like a business would

DO NOT ALLOW this zoning change to take place. We moved here for a reason and that was not to have a business on our street or to have the excess amount of traffic that a business would create. We moved here in April of 1972 and have been here every since. Why should our retirement years be ruined by a business on our block?

We note that the times of your meetings are during the time of day when the residents on this block are working and therefore many will not be able to attend to protest this zone change. We, also, note that all residents were not sent letters regarding this change. This affects the whole neighborhood and we should have all received letters.

Yours truly,

Wilhelm R. Ruff
Wilhelm R. Ruff

Helen M. Ruff Helen M. Ruff

146 Nightingale Drive Billings, Montana 59101-6637

CC: Board Of County Commissioners

Petition to [Action]

street, danger to our children that walk this drive to go to and from Lockwood Schools or the catch the bus to one of the trying to move in also. We do not want the zoning for our neighborhood changed to allow any business. High Schools. Property values will change. Once a business moves in we will not be able to stop other businesses from not want a business to move into our quiet residential neighborhood. The excess traffic and noise, wear and tear on our Petition Summary: __County Special Review #324-24Nightingal Drive-Creative Korner Early Childhood Center. We do

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